

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BARBARA WADE o/b/o B.J.,

Plaintiff,

v.

Case No. 8:18-cv-2947-AEP

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.

_____/

ORDER

This cause comes before the Court on the Unopposed Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) (Doc. 27). On March 30, 2020, this Court entered an order reversing and remanding the decision of the Commissioner for further administrative proceedings (Doc. 23). Thereafter, judgment was entered in favor of Plaintiff (Doc. 24), and, subsequently, Plaintiff was awarded fees in the amount of \$4,129.75 under the Equal Access to Justice Act (“EAJA”) (Doc. 26). Upon remand, the Commissioner issued a favorable decision for Plaintiff, resulting in an award of disability benefits (Doc. 27-2). As a result of the favorable decision, Plaintiff’s counsel now seeks payment of fees in the amount of \$8,623.35 pursuant to 42 U.S.C. § 406(b), with the fees in the amount of \$4,129.75 paid under the EAJA to be reimbursed to Plaintiff. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (finding that fee awards may be made under both 42 U.S.C. § 406(b) and the EAJA

but that the claimant's attorney must refund to the claimant the amount of the smaller fee).

Under 42 U.S.C. § 406(b), when a district court renders a judgment favorable to a Social Security claimant who was represented before the court by counsel, the court may allow a reasonable fee for such representation, not to exceed 25 percent of the total past-due benefits to which the claimant is entitled. 42 U.S.C. § 406(b)(1)(A). Here, the Social Security Administration awarded Plaintiff \$34,493.42 in past-due benefits and withheld a total of \$2,623.55 from Plaintiff's past-due benefits for possible payment of attorney's fees (Doc. 27-2, at 3). Upon review of the fee agreement and counsel's time sheets (Doc. 27-1 & 27-3), the undersigned concludes that an award of attorney's fees in the amount of \$8,623.35, or 25 percent of the total past-due benefits, is reasonable and appropriate. Since Plaintiff already received an award of fees in the amount of \$4,129.75 under the EAJA (Doc. 26), however, Plaintiff's counsel should reimburse Plaintiff for that amount. During a hearing held on the motion, Plaintiff's counsel indicated that the Commissioner would provide the \$2,623.55 set aside from the past-due benefits and that Plaintiff's counsel and Plaintiff would determine how to distribute the remainder of the fee award to counsel. The Commissioner expressed no objection to proceeding in that manner. Accordingly, after consideration, it is hereby

ORDERED:

1. The Unopposed Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) (Doc. 27) is GRANTED.

2. Plaintiff's counsel is awarded attorney's fees in the amount of \$8,623.35 under 42 U.S.C. § 406(b).

3. Plaintiff's counsel is directed to reimburse to Plaintiff the \$4,129.75 in fees paid under the EAJA.

DONE AND ORDERED in Tampa, Florida, on this 3rd day of May, 2022.



ANTHONY E. PORCELLI
United States Magistrate Judge

cc: Counsel of Record